

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**JACK RAY WAGNER, JR.,**

**Plaintiff,**

**v.**

**Civil Action No. 2:09cv28**

**WEXFORD MEDICAL HEALTH SERVICES,  
TRISTEN TENNEY, DR. DAVID PROCTOR,  
and WARDEN TERESA WAID,**

**Defendants.**

**ORDER**

On July 21, 2010, Magistrate Judge David J. Joel filed his Report and Recommendation, wherein the plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within fourteen (14) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed. The Court notes that the Report and Recommendation was mailed to the plaintiff and returned as undeliverable. The Court further notes that the plaintiff has a continuing obligation to keep the Court informed of his mailing address. Accordingly, the Court will proceed with consideration of the Report and Recommendation reviewing for clear error.<sup>1</sup>

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the plaintiff in his Complaint, filed pursuant to 42 U.S.C. § 1983, wherein the plaintiff alleges that the defendants were deliberately indifferent to his serious medical needs, were thoroughly considered by Magistrate Judge Joel in his Report and

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<sup>1</sup>The failure of a party to object to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See ***Wells v. Shriners Hospital***, 109 F.3d 198, 199-200 (4th Cir. 1997); ***Thomas v. Arn***, 474 U.S. 140, 148-153 (1985).

Recommendation. Moreover, the Court, upon a review for clear error of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

**ORDERED** that Magistrate Judge Joel's Report and Recommendation (Doc. 31) be, and the same hereby is, accepted and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Defendants' Motion for Summary Judgment (Doc. 27) be, and the same hereby is, **GRANTED**. It is further

**ORDERED** that the plaintiff's Complaint (Doc. 1) be, and the same hereby is, **DISMISSED WITH PREJUDICE** and **STRICKEN** from the docket of this Court. It is further

**ORDERED** that the Clerk shall enter judgment for the defendants. It is further

**ORDERED** that, if the plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein.

DATED: August 25, 2010

  
United States District Judge